

**UNITED STATES DISTRICT COURT
EASTERN OF WASHINGTON**

J. MITCH HALL and NATHAN
KAY, on behalf of themselves and
similarly situated individuals,

Plaintiffs,

v.

L-3 COMMUNICATIONS
CORPORATION, L-3
COMMUNICATIONS VERTEX
AEROSPACE, LLC and L-3
COMMUNICATIONS
INTEGRATED SYSTEMS L.P.,

Defendants.

NO. 2:15-cv-231-SAB

THIRD AMENDED COMPLAINT
AND DEMAND FOR TRIAL BY
JURY

EXEMPT FROM FILING FEES
UNDER 38 U.S.C. § 4323(h)(1)

Plaintiffs Joseph Mitch Hall and Nathan Kay (collectively “Named Plaintiffs”), through their attorneys, and on behalf of Nathan Kay and other similarly situated National Guard and Reserve members who applied to work as pilots at Defendants L-3 Communications Corp., L-3 Communications Vertex Aerospace, LLC, and/or L-3 Communications Integrated Systems L.P.

THIRD AMENDED COMPLAINT - 1

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1 (collectively, “Defendants” or “L-3”), but were denied initial employment due to
2 their status or service in the National Guard or Reserves in violation of the
3 Uniformed Services Employment and Reemployment Rights Act of 1994
4 (“USERRA”), and/or the Washington Law Against Discrimination (“WLAD”),
5 and allege:
6

7 **INTRODUCTION**

8 1.1 This is an action brought pursuant to USERRA, 38 U.S.C. § 4301 *et seq.*,
9 and the Washington Law Against Discrimination (“WLAD”), on behalf of a class
10 of National Guard and Reserve members who applied to work as pilots at L-3,
11 but were denied employment because of their membership or service in the
12 National Guard or Reserves.
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14 1.2 L-3 is one of the ten largest defense contractors in the United States, and is
15 a prime contractor in intelligence, surveillance, and reconnaissance systems,
16 aircraft sustainment, simulation and training, and detection systems. L-3’s
17 customers include the Department of Defense, U.S. Government intelligence
18 agencies, the Department of Homeland Security, foreign governments, and
19 domestic and international commercial customers. In 2015, L-3 earned \$10.466
20 billion in sales, including \$6.973 billion in Department of Defense contracts and
21 \$7.291 billion in U.S. government contracts overall. At the end of 2015, L-3
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1 employed about 38,000 full-time and part-time employees, 86% of which were in
2 the United States.

3 1.3 In this action, Plaintiffs Hall and Kay allege that they and other members of
4 the Proposed Class were subjected to and injured by the same pattern, practice or
5 policy of L-3 preferring to hire non-lateral pilot applicants who *are not* current or
6 active National Guard or Reserve members over non-lateral pilot applicants who
7 *are* current or active National Guard or Reserve members.
8

9 1.4 Plaintiffs allege that L-3's pattern, practice, or policy violates USERRA's
10 anti-discrimination provisions, 38 U.S.C. § 4311, with respect to all members of
11 the Proposed Class, and violates the Washington Law Against Discrimination,
12 RCW 49.60.180, with respect to members of the Proposed Class who sought work
13 from or in the State of Washington. Plaintiffs seek an injunction barring L-3 from
14 continuing to engage in this unlawful pattern, practice, or policy that is harming
15 National Guard and Reserve members, and Plaintiffs seek compensation for the
16 National Guard and Reserve members who have been denied employment,
17 earnings, and benefits as a result of such unlawful conduct.
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II. PARTIES AND JURISDICTION

2.1 Plaintiff JOSEPH “MITCH” HALL (“Mr. Hall”) resided in Spokane, Washington during all times relevant to this case.

2.2 Plaintiff NATHAN KAY (“Mr. Kay”) resided in Spokane, Washington during all times relevant to this case.

2.3 Defendant, L-3 COMMUNICATIONS CORPORATION (“L-3/CC”) is a Delaware corporation that is licensed to conduct business in this district, maintains a Washington State Uniform Business Identifier 601800495 and Washington State Tax Identification Number (same), maintains a Washington State Reseller Permit Number A05 9973 17, maintains a business location at 621 W. Malon Street, Spokane, WA 99201. Upon information and belief L-3/CC transacts business within this District from that address, owns, uses or possesses personal property at that address, serves the state’s markets, contracts to insure property and risk at that address, and is registered to do business in Washington State and has designated CT Corporation in Olympia, Washington as its registered agent with the Secretary of State. L-3/CC had control of the employment opportunities of Mr. Hall and Mr. Kay, through its agents, and is a “private employer” as defined by 38 U.S.C. § 4303(4) and 38 U.S.C. § 4323(a), (b), (c), and (h).

1 2.4 L-3/CC is the parent company of Defendants L-3 COMMUNICATIONS
2 VERTEX AEROSPACE (“L-3 VERTEX”) and L-3 COMMUNICATIONS
3 INTEGRATED SYSTEMS (“L-3/CIS”).

4 2.5 Each Defendant, L-3/CC, L-3 VERTEX and L-3/CIS shares a common
5 management, interrelation between operations, centralized control of labor
6 relations, and common ownership.

7 2.6 L-3 VERTEX is a business unit or “division” within L-3/CIS.

8
9 2.7 Defendant L-3 VERTEX is a Delaware corporation that is licensed to
10 conduct business in this District, has employees (including Mr. Hall) who reside
11 in this District, maintains a Washington State Uniform Business Identifier
12 602140626 and Washington State Tax Identification Number (same), maintains a
13 Washington State Reseller Permit Number A08 089317, maintains a place of
14 business located on Fairchild Air Force Base, a military installation located within
15 this district. Upon information and belief, L-3 VERTEX transacts business within
16 this District from that address, leases space from the United States at that address,
17 contracts with the United States from that address, owns, uses or possesses
18 personal property at that address, serves the state’s markets, contracts to insure
19 property or risk at that address, is registered to do business in Washington State
20 and has designated CT Corporation in Olympia, Washington as its registered
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1 agent with the Secretary of State. L-3 VERTEX had control of the employment
2 opportunities of Mr. Hall, through its agents, and was a primary decision maker
3 regarding Defendants' violation of both Named Plaintiffs' rights and is a "private
4 employer" as defined by 38 U.S.C. § 4303(4) and 38 U.S.C. § 4323(a), (b), and
5 (c).
6

7 2.8 Defendant L-3/CIS is a Delaware Limited Liability Partnership, has
8 employees (including Mr. Hall) who reside in this District, maintains a business
9 unit located on Fairchild Air Force Base, within this District, had control of the
10 employment opportunities of both Named Plaintiffs, through its agents, and was a
11 primary decision maker regarding Defendants' violation of both Named Plaintiffs'
12 rights and is a "private employer" as defined by 38 U.S.C. § 4303(4) and 38
13 U.S.C. § 4323(a), (b), and (c).
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16 2.9 Each Defendant, L-3/CC, L-3 VERTEX and L-3/CIS maintains continuous
17 and systematic interaction in Washington State.
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19 2.10 Each Defendant, L-3/CC, L-3 VERTEX and L-3/CIS and its agents, had
20 knowledge that Mr. Hall and Mr. Kay were residents of Washington State (and
21 this District) during the time frame relevant to this case.
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1 2.11 Each Defendant, L-3/CC, L-3 VERTEX and L-3/CIS and its agents
2 intentionally directed conduct towards the Named Plaintiffs here in Washington
3 State, knowing that its conduct would cause harm to the Named Plaintiffs.

4 2.12 Each Defendant, L-3/CC, L-3 VERTEX and L-3/CIS and its agents
5 executed agreements, and exchanged employment, pay, retirement, leave and tax
6 reporting information and documents with Mr. Hall in this state and District
7 through a secure (not passive) server and internet connection accessed by Mr. Hall
8 via password, with permission and credentials provided for by Defendants for
9 those purposes, and paid Mr. Hall for work that Defendants directed him to
10 performed in Washington State and in this district including travel and
11 reimbursements.
12

13 2.13 Hereinafter, unless specified otherwise, Defendants are identified
14 collectively as “L-3”.
15

16 2.14 The U.S. District Court for Eastern District of Washington has subject
17 matter jurisdiction over this matter pursuant to 38 U.S.C. § 4323(b)(3), and 28
18 U.S.C. § 1331.
19

20 2.15 This Court has supplemental jurisdiction over Mr. Kay’s state law claims
21 pursuant to 28 U.S.C. § 1367, as his state law claims are so related to his federal
22 claims in this action such that they form the same case or controversy.
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24 THIRD AMENDED COMPLAINT - 7
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1 2.16 This Court has personal jurisdiction over Defendants because the claims
2 and causes of action in this action arise from or are connected with its extensive
3 business activities in Washington State.

4 2.17 Venue is proper in this District under 38 U.S.C. § 4323(c)(2), because the
5 Defendants maintain places of business in this District, as well as under 28 U.S.C.
6 1391(b)(2), because a substantial part of the events or omissions giving rise to
7 Plaintiffs' claims occurred in this District.
8

9 **III. FACTS**

10
11 3.1 Plaintiffs incorporate the above paragraphs.

12 **(Mitch Hall)**

13 3.2 Mr. Hall is a veteran of the U.S. Air Force and Washington Air National
14 Guard.
15

16 3.3 Mr. Hall currently serves in the Washington Air National Guard and did so
17 at all times relevant to this action.

18 3.4 During early 2013, Mr. Hall, while residing in the State of Washington,
19 applied for employment with L-3.
20

21 3.5 During the May 2013 timeframe, Chris Root (L-3 Chief Pilot) telephoned
22 Mr. Hall at Mr. Hall's Washington residence, requested additional employment
23

1 information, and conducted Mr. Hall's employment interview. During the pre-
2 employment process, Hall was listed as "recently separated veteran."

3 3.6 Approximately one week later, Mr. Root telephoned Mr. Hall at Mr. Hall's
4 Washington residence, and offered Mr. Hall employment.

5
6 3.7 Thereafter, L-3 sent emails to Mr. Hall, while Mr. Hall was in Washington,
7 containing hiring paperwork. Mr. Hall, while in Washington, completed the
8 paperwork and returned it to L-3.

9
10 3.8 L-3 VERTEX hired Mr. Hall in July 2013 to work as a pilot in L-3's S4
11 Program. Upon information and belief, Mr. Hall is concurrently, and or at times,
12 alternately employed by L-3/CIS, although his supervisors and reporting structure
13 remained the same throughout the relevant periods as identified in this amended
14 complaint.

15
16 3.9 On July 15, 2013, L-3 delivered an Alternative Dispute Resolution
17 agreement with L-3/CIS and Mr. Hall, at his home residence. Mr. Hall executed
18 that agreement and submitted it to L-3 through its secure web site. The agreement
19 states that it "does not cover USERRA claims."

20
21 3.10 In August 2013, L-3 required Mr. Hall to obtain a U.S. Passport for his
22 employment. L-3 directed Mr. Hall to obtain a passport, and paid him for that
23 work he performed in Washington State.

1 3.11 The L-3 S4 Program provides contract aviation support of U.S. Government
2 operations in Afghanistan.

3 3.12 Playing roles in Mr. Hall's employment with L-3 were Kathy Holland, the
4 L-3 S4 Program's "Chief Scheduler"; Mark Barreault and Dave Akers, individuals
5 who formerly (Barreault) and currently (Akers) serve as the S-4 Program's
6 "Program Manager"; Chris Root, the S4 Program's "Chief Pilot"; Alan
7 Campbell, one of the S4 Program's two "Lead Pilots"; and Randall Gladney, the
8 S4 Program's "Site Lead."
9

10
11 3.13 As the Chief Pilot, Mr. Root hires people into the S4 Program and works
12 with Kathy Holland in that capacity.

13 3.14 As a Lead Pilot, Mr. Campbell is in charge of day-to-day scheduling with
14 regard to the S4 Program's operations in Afghanistan. Lead Pilots report to the
15 Chief Pilot and the Chief Pilot reports to the Program Manager.
16

17 3.15 Pilots employed with the S4 program rotate from their homes of record
18 (Spokane, in Mr. Hall's case) to Afghanistan to perform their duties as
19 government aviation contractors and, when their tours (which span one to three
20 months) end, they rotate home and take leave until their next tours begin.
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1 3.16 At times, however, the U.S. Armed Services activates individuals, like Mr.
2 Hall, for military duty which, in turn, makes it more difficult for L-3 to schedule
3 pilots for its overseas rotations.

4 3.17 Because military reserve activations sometimes cause L-3 S4 Program
5 managers difficulty in scheduling, those managers openly exhibit hostility towards
6 employees who are current or active members of the National Guard or Reserve.

7 3.18 During a September 2012 L-3 new pilot orientation session in Greenville,
8 Texas, Mr. Berrault asked L-3 employee Justin Bridges-Crawford (a newly hired
9 L-3 pilot who previously served in the U.S. Air Force) whether he (Crawford) was
10 in the military reserves. When Mr. Bridges-Crawford replied “no” Mr. Berrault
11 said “reservists are always trying to get over and get out of work.”
12

13 3.19 In August 2013, during Mr. Hall’s L-3 new pilot orientation session, Mr.
14 Hall informed Ms. Holland, L-3 S4 Program’s “Chief Scheduler,” that Hall had a
15 military reserve obligation with the Air National Guard. In response Ms. Holland
16 angrily remarked “you’re one of those Guard guys who gets to go home whenever
17 he wants.”
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21 3.20 Ms. Holland, in retaliation for Mr. Hall informing her of his military
22 commitment, delayed Mr. Hall’s processing into the L-3 program which, in turn,
23 caused Mr. Hall to lose pay and benefits.
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1 3.21 By way of comparison, upon information and belief, the other seven non-
2 military reserve pilots in Mr. Hall's new employee orientation class were allowed
3 to wait for their rotation to begin *while* collecting pay whereas Mr. Hall *was not*
4 afforded pay while he waited for his rotation to begin.

5
6 3.22 During 2013, Mr. Hall's Air National Guard service did not affect Mr.
7 Hall's L-3 schedule, as he was able to perform military duty during times when he
8 was not working Afghanistan as an employee of L-3.

9
10 3.23 During 2014, however, Mr. Hall's military service affected his work
11 schedule.

12 3.24 In about January 2014, L-3 VERTEX sent a 2013 Tax Form W-2 to Mr.
13 Hall at his Spokane, Washington area residence.

14
15 3.25 On or about October 10, 2014, Mr. Hall informed L-3 of upcoming
16 (December 2014 – January 2015) military duty.

17 3.26 Mr. Hall's military orders for the above timeframe began on or about
18 December 6, 2014 and ran through January 31, 2015.

19
20 3.27 Mr. Hall served honorably in the military from approximately December 6,
21 2016 to January 31, 2016.

1 3.28 On or about December 22, 2014, Mr. Hall texted Mr. Root, requested re-
2 employment, and informed Mr. Root that he (Hall) would be able to be on-site on
3 February 5, 2015 and perform his duties as a L-3 pilot.

4 3.29 On January 2, 2015, Mr. Hall emailed Ms. Holland and requested to return
5 to work on February 5, 2015. In that email request, Mr. Hall informed Ms.
6 Holland that his Air National Guard unit had been overwhelmed by non-forecast
7 deployments.
8

9 3.30 On January 6, 2015, Ms. Holland informed Mr. Hall, via email, that L-3
10 was “very short on pilots” in January – February 2015 and stated L-3 needed Mr.
11 Hall “on site next week.”
12

13 3.31 On January 6, 2015, Mr. Hall informed Ms. Holland, via email, that his
14 military orders would not end until January 31, 2015.
15

16 3.32 On January 15, 2015, Mr. Hall again requested re-employment and, that
17 same day, Ms. Holland informed Mr. Hall, via email, that she was “waiting PM
18 approval on a 30 day rotation” and stated she did not “have any manning needs for
19 the month of March so I can’t send you out there for 60 days.”
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21 3.33 On at least January 21, 23, and 26, 2015, Mr. Hall requested, through Mr.
22 Root, that he be re-employed with L-3.
23

1 3.34 On January 26, 2015, Mr. Root rejected Mr. Hall's request for
2 reemployment saying that he was "not able to get" Mr. Hall's "tour approved."

3 3.35 As of January 26, 2015, however, at least three L-3 pilot openings existed
4 for which Mr. Hall was qualified.

5 3.36 In about January 2015, L-3 VERTEX and L-3/CIS sent 2014 W-2 Tax
6 Forms to Mr. Hall at his Spokane, WA area residence.

7 3.37 In early February 2015, Justin Bridges-Crawford, one of Mr. Hall's L-3 S4
8 co-worker pilots, asked Mr. Campbell why Mr. Hall was not at work.
9

10 3.38 Mr. Bridges-Crawford asked that question because the S4 Program was
11 short on personnel and working additional hours.
12

13 3.39 For example, S4 pilot Greg Lufker had been sent home for unspecified
14 reasons, S4 pilot Mike Day quit, and the S4 Program's hours were increased due
15 to another L3 program's in-country requirements in Afghanistan.
16

17 3.40 Mr. Bridges-Crawford, in Mr. Campbell's office, said words to the effect of
18 "why don't we bring Mitch out here." In response, Mr. Campbell stated "Mitch is
19 all about Mitch . . . because Mitch went on military orders when we needed him
20 around for the holidays." Mr. Bridges-Crawford informed Mr. Campbell that Mr.
21 Hall lost money because of his holiday military duty and informed Mr. Campbell
22 that "Mitch is ready to come to Afghanistan" because he is "off military orders."
23

1 3.41 Mr. Campbell replied “just because Mitch gets off orders doesn’t mean he
2 can come back to work here just because he wants to.”

3 3.42 As of February 12, 2015, L-3’s web site reflected that there were at least
4 three L-3 pilot openings for work in Afghanistan.
5

6 3.43 In March 2015, L-3 required Mr. Hall to obtain a travel visa for
7 Afghanistan for his employment. L-3 directed Mr. Hall to obtain the travel visa,
8 delivered required documents for the visa to Mr. Hall in Washington State, and
9 paid him for that work he performed in Washington State.
10

11 3.44 Mr. Hall continued to request re-employment with L-3, and, during that
12 process Mr. Hall gave L-3 notice of additional upcoming military obligations,
13 including through the following e-mail:
14

15 **From:** mitch hall [mailto:jmitchhall@gmail.com]
16 **Sent:** Wednesday, April 29, 2015 8:28 PM
17 **To:** Holland, Kathy @ AS - C3ISR
18 **Cc:** Root, Chris @ AS - C3ISR
19 **Subject:** my revised rotations

20 Hi Kathy,

21 I had a couple of questions regarding my upcoming rotations. It
22 looks like both of my next two R&R's are short by 9 and 11
23 days. Since I require 60 days at home to maintain my currencies
24 with the ANG, shorting those R&R's makes it very difficult to
25 keep up with my obligations here. I don't mind extending for you
anytime you need but I really do need to have a full 60 when I'm
home.

1 Thanks for your understanding.

2 Mitch

3
4 3.45 In response to Mr. Hall's email, Mr. Root replied:

5 **From:** <Chris.Root@l-3com.com>

6 **Date:** April 30, 2015 at 8:09:23 AM PDT

7 **To:** <jmitchhall@gmail.com>, <Kathy.Holland@l-3com.com>

8 **Cc:** <David.Akers@l-3com.com>

9 **Subject: RE: my revised rotations**

Hi Mitch,

10 We will do our best to help you schedule your guard unit
11 responsibilities but there are company scheduling goals as well.
12 We do see ourselves as your primary employer. We have a legal
13 obligation and a corporate policy to adjust our schedules based on
14 the Military Orders you receive but not every convenient unit
15 activity available. We also have a Program Policy to rotate the
16 employees that work the Christmas holiday each year. In order to
17 accomplish that goal, we do have to adjust the 60/60 rotations up
18 to 10 days each rotation, as I tell every applicant in the telephone
19 interview. If we adjust your schedule out for straight 60 day R and
20 R's you would be stuck in a schedule that locks you in to working
21 Christmas every year, which is not our goal. At this point, we will
22 not be adjusting your current schedule based on Military
23 responsibilities without receiving orders from the Government.

Thanks for your understanding,

24 Chris Root

25 Chief Pilot – S4

L3 Communications

C³ ISR Services

Chris.root@l-3com.com

O: (469) 698-8206

M: (903) 217-9572

1 3.46 To take military leave and preserve his right to reemployment after his
2 military leave under USERRA, Mr. Hall was only required to provide simple oral
3 or written notice of his military obligations, and that notice “may be informal and
4 does not need to follow any particular format.” 20 C.F.R. §1002.85(c). Thus,
5 L-3’s refusal to accommodate Mr. Hall’s schedule without Mr. Hall providing L-3
6 with formal military orders violates USERRA.
7
8

9 3.47 Although L-3 professes to afford pilots a 10 days per year “differential pay”
10 bonus (which covers the difference between a service-member’s lower paying
11 military job and his or her higher paying L-3 job), L-3 has not paid that benefit to
12 Mr. Hall.
13

14 3.48 Upon information and belief, the U.S. Government (as is standard practice
15 with certain Department of Defense contracts) reimburses and/or funds L-3 the 10
16 days per year “differential pay.” Or, put differently, L-3 does not pay its military
17 reserve employees the 10 day per year differential bonus of its own resources, and
18 instead the American taxpayer does.
19

20 3.49 L-3 did not employ Mr. Hall for the February – April 2015 rotation, even
21 though work was available to work throughout that period of time.
22

23 3.50 L-3 did re-employ Mr. Hall on or about May 12, 2015.
24

1 3.51 L-3's re-employment of Mr. Hall in May 2015 does not cure its February
2 2015 USERRA violation, as prompt reemployment requires an employer to
3 reemploy a servicemember within two weeks of his request for reemployment. 20
4 C.F.R. § 1002.181.

5
6 3.52 Had Mr. Hall not been called to military duty, he would have been
7 promoted to a "Safety Officer" position, which, in turn, would have increased Mr.
8 Hall's monthly pay by approximately \$60.00 per day.

9
10 3.53 Randall Gladney, the S-4 Program Site Lead, told Mr. Hall in the early-July
11 2015 timeframe that Mr. Hall did not receive a promotion for the Safety Officer
12 promotion because Mr. Hall was "not reliable" given that Mr. Hall was gone too
13 much because of his military obligations.

14
15 3.54 Throughout his employment, L-3 paid or reimbursed Mr. Hall for mileage,
16 travel and plane tickets for Mr. Hall to travel from his residence in Washington to
17 locations where he was needed for work at L-3.

18
19 3.55 In August, L-3 required Mr. Hall to obtain a U.S. Government Contractors
20 Identification card for his employment. L-3 directed Mr. Hall to obtain the
21 identification card at the nearest Real-Time Automated Personnel Identification
22 System (RAPIDS) site, Fairchild Air Force Base, Washington, and L-3 paid him
23 for that work he performed in Washington State.

1 3.56 On August 31, 2015, after L-3 was given notice of this pending lawsuit,
2 Dennis Dickerson, Director, C3 ISR Services, L-3 Communications, contacted
3 Mr. Hall's commanding officer at Fairchild Air Force Base to "confirm" Mr.
4 Hall's active duty and leave request. This is the first time L-3 has questioned Mr.
5 Hall's military obligations through his command.
6

7 **(Nathan Kay)**

8 3.57 On or about October 3, 2014 Mr. Kay (while in the State of Washington)
9 applied, online, for employment with L-3 as a "Basic Pilot."
10

11 3.58 During that timeframe Benjamin Jones, a pilot in Mr. Kay (and Mr. Hall's)
12 Air National Guard unit also applied for employment with L-3 as a pilot.

13 3.59 At the time of their applications, neither Kay nor Jones had been previously
14 been employed by any of the Defendants or an entity controlled or related to any
15 of the Defendants.
16

17 3.60 On his online application, Mr. Kay, who exceeded the minimum
18 qualifications for the job, noted that he was currently a member of the Washington
19 Air National Guard.
20

21 3.61 Upon information and belief, Mr. Jones also exceeded the minimum
22 qualifications for the L-3 pilot job for which he applied.
23

1 3.62 On December 22, 2014, Mr. Hall (who is in the same Air National Guard
2 unit as Nate Kay) asked Mr. Root whether he (Root) had reviewed Nate Kay's
3 resume.

4 3.63 Upon information and belief, both Mr. Campbell and Ms. Holland
5 considered Mr. Kay's employment application but rejected it, in part, because of
6 Mr. Kay's reserve military status.

7 3.64 As of January 13, 2015, at least nine pilot openings existed at L-3, all of
8 which Mr. Kay and Mr. Jones were qualified to fill.

9 3.65 As of February 17, 2015, the Basic Pilot position remained open.

10 3.66 L-3 never employed Mr. Kay.

11 3.67 L-3 never employed Mr. Jones.

12 3.68 There have been approximately 15,000 applicants for pilot positions with L-
13 3 since 2011.

14 3.69 There were hundreds of applicants for the positions that Hall and Kay
15 applied for in 2013 and 2014.

16 3.70 During the same period of time, more than 10 other individuals who applied
17 to work as pilots at L-3 identified their current status in the National Guard or
18 reserve in their application materials but were rejected or not hired by L-3.
19

1 3.71 A sample of approximately 200 applications for pilot positions at L-3,
2 produced by Defendants in this litigation, shows that pilot applicants who *at the*
3 *time of their applications* were current or active National Guard or reserve
4 members and were not already employed by L-3 or employed by a contract or
5 company being absorbed, acquired, or taken over by L-3 or a L-3 related entity
6 (“non-lateral applicants”) had a substantially lower chance of obtaining
7 employment as a pilot at L-3 compared to other pilot applicants in the same group
8 of applicants. In the pool of approximately 200 applicants who applied for 31
9 positions, L-3 hired thirty one (31) pilots. At least 25 of the non-lateral 205
10 applicants (about one out of eight) were current or active National Guard or
11 reserve members at the time of their applications. Of the non-lateral applicants
12 who were hired, only two applicants identified in their applications that they had
13 current or active reserve or National Guard obligations.
14

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16
17 3.72 Within the sample of approximately 200 applicants produced by
18 Defendants, the total number of current or active National Guard or reserve
19 members who were rejected or not hired for a pilot position at L-3 is at least 30.
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21 3.73 In the same sample of approximately 200 applicants, the rate at which L-3
22 hired non-lateral pilot applicants who at the time of their applications were current
23

1 or active National Guard or reserve members is significantly lower than the rate at
2 which L-3 hired other non-lateral pilot applicants.

3 3.74 Upon information and belief, Defendants have a pattern, policy, or practice
4 of preferring to hire non-lateral pilot applicants who *are not* current or active
5 National Guard or Reserve members over non-lateral pilot applicants who *are*
6 current or active National Guard or Reserve members.
7

8 3.75 Upon information and belief, the rate at which Defendants have hired non-
9 lateral pilot applicants who *are not* current or active National Guard or Reserve
10 members at the time of their applications is significantly higher than the rate at
11 which Defendants have hired non-lateral pilot applicants who *are* current or active
12 National Guard or Reserve members.
13

14 3.76 Upon information and belief, other pilots who applied to L-3's MARSS
15 program were denied an employment interview and employment due to their
16 military service or status once L-3 learned that those applicants were current or
17 active National Guard or Reserve members.
18

19 3.77 Upon information and belief, other pilots who applied to L-3's S4 program
20 were denied an employment interview and employment due to their military
21 service or status once L-3 learned that those applicants were current or active
22 National Guard or Reserve members. For example, upon information and belief, a
23

1 former L-3 S4 Program pilot who worked for L3 in the 2012-2015 timeframe
2 (“former pilot”) recommended that L-3 hire another individual who was a member
3 of the Air National Guard; the former pilot informed, or caused to be informed, L-
4 3’s management that the Air National Guard member was a reservist who was
5 looking for work as a sensor operator; the Air National Guard member met the
6 minimum qualifications for the sensor operator position for which he applied; and
7 he applied for work with L-3, but was not afforded an interview by L-3.
8

9 3.78 During the November 2014 timeframe, the same former pilot telephoned
10 Kathy Holland, L-3 S4 Program’s “Chief Scheduler,” about an upcoming rotation,
11 and during that telephone call Ms. Holland expressed anger that military reservists
12 were causing scheduling difficulties for L-3.
13

14 3.79 Although required by federal law, 38 U.S.C. § 4334, L-3 does not maintain
15 (at the appropriate workplaces) the federally-mandated poster that informs
16 employees of their rights and employers of their obligations under USERRA.
17

18 3.80 At all times relevant hereto, L-3 had a duty to conduct itself in compliance
19 with the law, including USERRA, and ensure that its agents followed USERRA.
20 The above actions by L-3 and its agents violated those duties and caused Plaintiffs
21 to suffer damages.
22

IV. CLASS ACTION ALLEGATIONS

4.1 Plaintiffs re-alleges the above paragraphs.

4.2 Plaintiff Nathan Kay brings this action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3), on behalf of the following persons:

National Class (“Class” or “National Class”)

All persons who applied to work as pilots at L-3 since January 1, 2011, who

(1) at the time of his or her application was an active or current member of the National Guard or Reserve; and

(2) at the time of his or her application was not employed by any of the Defendants or employed by a contract or company being absorbed, acquired, or taken over by the Defendants (a non-lateral applicant); and

(3) was not hired for one or more position(s) as a pilot due to his or her status or service in the National Guard or Reserve.

Washington State Subclass:

All persons who, while residing or working in the State of Washington, applied to work as pilots at L-3 since January 1, 2011, who

(1) at the time of his or her application was an active or current member of the National Guard or Reserve; and

1 (2) at the time of his or her application was not employed by any of
2 the Defendants or employed by a contract or company being
3 absorbed, acquired, or taken over by the Defendants (a non-lateral
4 applicant); and

5 (3) was not hired for one or more position(s) as a pilot due to his or
6 her status or service in the National Guard or Reserve.
7

8 Excluded from the National Class and the Washington Subclass are all former or
9 current pilots who previously reached settlements with or judgments against
10 Defendants in their individual USERRA and/or WLAD actions regarding the
11 practices challenged in this action.
12

13 **Impracticability of Joinder**

14 4.3 The class is so numerous that joinder of all members is impracticable. The
15 exact size of the class is not known. Upon information and belief, the class
16 consists of over 100 persons and may include hundreds of persons.
17

18 4.4 Upon information and belief, the members of the Proposed Class, who
19 applied for employment with L-3, are geographically dispersed throughout the
20 United States.
21
22
23
24

1 **Commonality**

2 4.5 Upon information and belief, the class members were subjected to and
3 injured by the same pattern, practice or policy of L-3 preferring to hire non-lateral
4 pilot applicants who *are not* current or active National Guard or Reserve members
5 over non-lateral pilot applicants who *are* current or active National Guard or
6 Reserve members (“the challenged practice”). There are numerous questions of
7 law or fact that are common to the class members, including the following:
8

- 9
- 10 i. Whether L-3 engaged in the challenged practice;
 - 11 ii. Whether the challenged practice violates USERRA, 38 U.S.C. §
12 4311;
 - 13 iii. What types of compensation and benefits the class members were
14 denied due to the challenged practice?
 - 15 iv. Whether, in engaging in the challenged practice, L-3 either knew or
16 showed reckless disregard for whether its conduct was prohibited by
17 USERRA such that the class members are entitled to receive
18 liquidated damages under USERRA. 38 U.S.C. § 4323(d) and 20
19 C.F.R. § 1002.312(c).
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25

1 **Typicality**

2 4.6 The claims of the Named Plaintiff Kay are typical of the claims of the
3 Plaintiff class he seeks to represent. The claims of Named Plaintiff Kay arise
4 from the same challenged practice and rely upon the same legal theory that the
5 challenged practice violates USERRA, 38 U.S.C. § 4311(a) & (b).
6

7 **Adequacy of Representation**

8 4.7 Named Plaintiff Kay will adequately represent the members of the Class,
9 does not have any conflicts with the other class members, and is represented by
10 experienced counsel who have substantial experience in USERRA and
11 employment class action litigation and who will vigorously prosecute the action
12 on behalf of the class.
13

14 **Rule 23(b)(3)**

15
16 4.8 This action is properly maintainable as a class action under Rule 23(b)(3) of
17 the Federal Rules of Civil Procedure.

18 4.9 The questions of law and fact common to the members of the class
19 predominate over questions affecting individual class members, and a class action
20 is superior to other available methods for the fair and efficient resolution of this
21 controversy.
22
23

1 4.10 By resolving the common issues described above in a single class
2 proceeding, each member of the proposed class will receive a determination of
3 whether L-3 engaged in a pattern, practice or policy of preferring to hire non-
4 lateral pilot applicants who *are not* current or active National Guard or Reserve
5 members over non-lateral pilot applicants who *are* current or active National
6 Guard or Reserve members, and whether that challenged practice violates
7 USERRA.
8

9 4.11 Members of the proposed class do not have a significant interest in
10 individually controlling the prosecution of separate actions.
11

12 4.12 No litigation concerning the challenged practice has been commenced by
13 any member of the class other than the Named Plaintiffs.
14

15 4.13 Concentration of the litigation in this forum is desirable, as this action
16 challenges a company-wide practice and it will benefit the class members and L-3
17 to have all of the class members' claims adjudicated in a single proceeding.
18

19 4.14 This class action can be managed without undue difficulty because the
20 issues presented are common to the class.
21
22
23
24

V. CAUSES OF ACTION

**COUNT I: VIOLATION OF USERRA, 38 U.S.C. § 4311
(All Plaintiffs against Defendants for Discrimination in Initial Employment)**

5.1 Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1 through 4.14 as if fully set forth herein.

5.2 Plaintiffs bring this claim on their own behalf and Plaintiff Kay brings this claim on behalf of all members of the Proposed Class.

5.3 Under USERRA, “[a] person who is a member of . . . has performed . . . or has an obligation to perform service in a uniformed service shall not be denied initial employment . . . or any benefit of employment by an employer on the basis of that membership, . . . performance of service, . . . or obligation.” 38 U.S.C. § 4311(a). “An employer shall be considered to have engaged in” such actions “if the person’s membership, . . . service, . . . or obligation for service in the uniformed services is a motivating factor in the employer’s action, unless the employer can prove that the action would have been taken in the absence of such membership, . . . service, . . . or obligation for service.” *Id.* § 4311(c).

5.4 Under USERRA, service in the National Guard or a Reserve component of the Armed Forces constitutes “service in the uniformed services.” 38 U.S.C. § 4303(13), (16), and is protected by the Act.

1 5.5 Upon information and belief, by engaging in a pattern, practice or policy of
2 preferring to hire non-lateral pilot applicants who *are not* current or active
3 National Guard or Reserve members over non-lateral pilot applicants who *are*
4 current or active National Guard or Reserve members, L-3 violated USERRA by
5 denying (or in the case of Plaintiff Hall, delaying) “initial employment” and
6 “benefit[s] of employment” on the basis of such National Guard or reserve
7 members’ “membership,” “performance of service” and/or “obligation to perform
8 service in a uniformed service,” 38 U.S.C. § 4311(a), and in particular by making
9 such reservists’ “membership” “service,” and/or “obligation for service in the
10 uniformed services” “a motivating factor in” Defendants’ denial of or delaying
11 initial employment. 38 U.S.C. § 4311(c).
12
13

14 5.6 Upon information and belief, L-3 would not have denied initial employment
15 to non-lateral reservists “in the absence of [their] membership . . . service, . . . or
16 obligation for service” in the uniformed services. 38 U.S.C. § 4311(c).
17

18 5.7 L-3 violated USERRA § 4311(a) by using Mr. Kay’s status and service in
19 the Air National Guard as a motivating factor in deciding to deny him initial
20 employment and by using Mr. Hall’s status and service in the Air National Guard
21 as a motivating factor in deciding to delay his initial employment.
22
23

1 5.8 At all relevant times hereto, L-3 maintained contracts with the United States
2 Government that required L-3 to follow the requirements and provisions of
3 USERRA, including 38 U.S.C. §§ 4311, 4312, 4313, and 4316.

4 5.9 The L-3 Managers and Directors who had responsibly over the employment
5 decisions at L-3 during the time frame alleged in this Complaint had access to the
6 requirements imposed upon employers under the USERRA, including, but not
7 limited to, posted USERRA workplace notices and L-3's applicable employment
8 policies or procedures.
9

10 5.10 The persons charged with employment-related decisions at L-3 during the
11 time frame alleged in this Complaint were familiar with the requirements imposed
12 upon employers under USERRA.
13

14 5.11 Defendants either knew or showed reckless disregard for whether their
15 conduct was prohibited by USERRA, and their conduct was willful, as defined by
16 38 U.S.C. § 4323(d)(1)(C), 20 C.F.R. § 1002.312(c), as Defendants were given
17 notice that their intended actions violated the law and Defendants carried out such
18 unlawful conduct with knowledge and responsibility that their actions were not
19 in compliance with USERRA. As such, liquidated damages are available and
20 warranted under 38 U.S.C. § 4323(d)(1)(C).
21
22
23

**COUNT II: VIOLATION OF THE WASHINGTON LAW AGAINST
DISCRIMINATION, RCW 49.60.180(1), (3)
(Plaintiff Kay and All Members of the Washington Subclass
Against Defendants for Discrimination in Hiring)**

5.12 Plaintiff Kay repeats and re-alleges the allegations set forth in paragraphs 1 through 5.11 as if fully set forth herein.

5.13 The Washington Law Against Discrimination (“WLAD”) makes it “for any employer” “[t]o refuse to hire any person because of . . . honorably discharged veteran or military status,” RCW 49.60.180(1), or “[t]o discriminate against any person in compensation or any other terms or conditions of employment because of . . . honorably discharged veteran or military status[.]” RCW 49.60.180(3). Under the WLAD, an “honorably discharged veteran or military status” includes “a person who is” “[a]n active or reserve member in any branch of the armed forces of the United States, including the national guard, coast guard, and armed forces reserves.” RCW 49.60.040(15).

5.14 Upon information and belief, by engaging in a pattern, practice or policy of preferring to hire non-lateral pilot applicants who *are not* current or active National Guard or Reserve members over non-lateral pilot applicants who *are* current or active National Guard or Reserve members and/or denying employment to non-lateral pilot applicants who are current or active National Guard or Reserve

1 members, L-3 violated the WLAD with respect to Mr. Kay and members of the
2 proposed Washington State Subclass by refusing to hire or otherwise
3 discriminating against such National Guard or Reserve members based because of
4 their “honorably discharged veteran or military status.” RCW 49.60.180(1), (3).
5 The honorably discharged veteran or military status of the members of the
6 Washington Subclass was a substantial factor in Defendants’ refusing to hire, or
7 otherwise discriminating against Plaintiff Kay and the members of the
8 Washington Subclass.
9

10
11 5.15 Mr. Kay’s honorably discharged veteran or military status was, as described
12 above, a substantial factor in Defendants’ decision to deny him employment.

13 **COUNT III: VIOLATION OF USERRA,**
14 **38 U.S.C. §§ 4312, 4313, 4316**
15 **(Plaintiff Hall against Defendants for Failure to Reemploy Him)**

16 5.16 Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1
17 through 5.15 as if fully set forth herein.

18 5.17 Under USERRA, “any person whose absence from a position of
19 employment is necessitated by reason of service in the uniformed services shall be
20 entitled to the reemployment rights and benefits and other employment benefits of
21 [USERRA],” if the person “has given advance written or verbal notice of such
22 service to such person’s employer,” the “cumulative length of the absence and of
23

1 all previous absences from a position of employment with that employer by reason
2 of service in the uniformed services does not exceed five years,” and the “person
3 reports to, or submits an application for reemployment to, such employer[.]” 38
4 U.S.C. § 4312(a).

5
6 5.18 Under USERRA, if a person is entitled to reemployment under § 4312, the
7 person must be reemployed “in the position of employment in which the person
8 would have been employed if the continuous employment of such person with the
9 employer had not been interrupted by such service,” or “a position of like
10 seniority, status and pay[.]” 38 U.S.C. §§ 4313(a)(1)(A), (a)(2)(A).

11
12 5.19 Under USERRA, a person who is entitled to reemployment “is entitled to
13 the seniority and other rights and benefits determined by seniority that the person
14 had on the date of the commencement of service in the uniformed services plus
15 the additional seniority and rights and benefits that such person would have
16 attained if the person had remained continuously employed.” 38 U.S.C. §
17 4316(a).

18
19
20 5.20 Mr. Hall was entitled to reemployment under § 4312, but he was denied
21 reemployment under § 4312, a reemployment position under § 4313(a), and the
22 rights and benefits associated with a reemployment position under § 4316(a).

23 5.21 Mr. Hall gave L-3 notice of his military obligations in October 2014.

1 5.22 Mr. Hall's cumulative length of uniformed service during his employment
2 at L-3 (December 6, 2014 to January 31, 2015) did not exceed five years.

3 5.23 Mr. Hall served honorably during the above timeframe.

4 5.24 Mr. Hall gave L-3 notice of his intent to return to work on, among other
5 days, December 22, 2014, January 2, 15, 21, 23 and 26, 2015.
6

7 5.25 Upon Mr. Hall's satisfying of USERRA's re-employment criteria L-3 was
8 required to re-employ Mr. Hall in either his (a) pre-deployment position (b) a
9 position similar the pre-service position in like seniority, status, and pay, or (c) the
10 next closet position. 38 U.S.C. § 4313(a).
11

12 5.26 By failing to promptly re-employ Mr. Hall in February 2015, L-3 violated
13 USERRA's re-employment provisions, including 38 U.S.C. §§ 4312, 4313, and
14 4316.
15

16 5.27 USERRA requires a servicemember to be reemployed "as soon as
17 practicable under the circumstances" and ordinarily "reemployment must occur
18 within two weeks of the employee's application for reemployment. 20 C.F.R. §
19 1002.181.
20

21 5.28 Defendants violated 38 U.S.C. § 4316, among other ways, by denying Mr.
22 Hall the seniority and-non seniority benefits provided by Defendants to his non-
23 military peers, such as, without limitation, prompt reemployment that Defendants
24

1 provided to individuals who take family or medical leave pursuant to the Family
2 Medical Leave Act.

3 5.29 As described above, Defendants' violations of USERRA were willful.
4 With respect to Plaintiff Hall's reemployment claim under 38 U.S.C. §§ 4312,
5 4313, and 4316, Defendants knew their obligations to reemploy Plaintiff Hall
6 under §§ 4312, 4313, and 4316, yet acted with knowledge or reckless disregard
7 for whether their conduct was prohibited by USERRA §§ 4312, 4313, and 4316.
8

9
10 **COUNT IV: VIOLATION OF USERRA, 38 U.S.C. § 4318**
11 **(Plaintiff Hall against Defendants)**

12 5.30 Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1
13 through 5.29 as if fully set forth herein.

14 5.31 USERRA § 4318 sets forth "the right to pension benefits of a person
15 reemployed" under USERRA. 38 U.S.C. § 4318(a)(1)(A). Returning veterans
16 must be treated "as not having incurred a break in service with the employer [] by
17 reason of such person's period or periods of service in the uniformed services[.]"
18 *id.* §4318(a)(2)(A), making an employer "liable to an employee pension benefit
19 plan for funding any obligation of the plan to provide the benefits" for a veteran's
20 period of military service. *Id.* § 4318(b)(1). An employer must make its
21 "employer contribution for the person in the same manner and to the same extent
22
23
24

1 the allocation occurs for other employees during the period of service.” *Id.* §
2 4318(b)(2). When an employer’s pension contribution is contingent upon an
3 employee making his or her own contribution to a pension plan (*i.e.*, a matching
4 contribution), the employer must make the contribution when the employee makes
5 his or her own contribution, and thus must allow the employee to make such a
6 contribution. 38 U.S.C. § 4318(b)(2).

8 5.32 Under Defendants’ pension plan, Defendants were required to match up to
9 3% of Hall’s earnings, so long as Hall made contributions of up to 3% of his
10 earnings.
11

12 5.33 Defendants violated 38 U.S.C. § 4318, among other ways, by denying Mr.
13 Hall the right to make contributions to his pension plan for the period of his
14 military service, and by failing to give timely and adequate notice to the plan
15 administrator, as required by USERRA.
16

17 5.34 Department of Labor regulations require make-up contributions under
18 USERRA to be made within 90 days after reemployment. 20 C.F.R.
19 §1002.262(a).
20

21 5.35 As described above, Defendants’ violations of USERRA were willful.
22 With respect to Plaintiff Hall’s USERRA pension claim under § 4318, Defendants
23 knew their obligations to inform Plaintiff Hall of his right to make pension
24

1 contributions for the period of his military service, to match any contribution of
2 Plaintiff Hall, and inform the pension plan administrator about Plaintiff Hall's
3 USERRA rights, yet Defendants acted with knowledge or reckless disregard for
4 whether their conduct was prohibited by USERRA § 4318.
5

6 **VI. PRAYER FOR RELIEF**

7 6.1 Plaintiffs respectfully ask this Court to grant them the following relief:

- 8 a. Declare that Defendants' actions violated USERRA and the WLAD, and
9 permanently enjoin Defendants from engaging in such violations.
10
11 b. Certify this action as a class action under Fed. R. Civ. P. 23(a) and (b)(3).
12
13 c. Designate Named Plaintiff Kay as a Class Representative pursuant to Fed.
14 R. Civ. P. 23(c).
15
16 d. Appoint the undersigned as class counsel pursuant to Fed. R. Civ. P. 23(c)
17 & (g).
18
19 e. Award the Members of the National Class both economic damages in the
20 amount to be proven at trial, and award the Members of the Washington
21 State Subclass economic and non-economic damages available under
22 Washington State law, including lost wages, back pay, front pay, lost
23 benefits of employment, negative tax consequences of any award,
24
25

1 liquidated damages, exemplary damages, prejudgment interest, and punitive
2 damages, as provided by law.

3 f. Award reasonable attorneys' fees, litigation expenses, and costs, pursuant to
4 38 U.S.C. § 4323(h), and as otherwise provided by law.

5 g. Award any and all appropriate equitable relief, including reinstatement and
6 recoupment of any loss of wages or benefits. 38 U.S.C. § 4323(d)(1)(A)(B).

7 h. Declare that Defendants' violations of USERRA were unlawful and
8 violated USERRA, 38 U.S.C. §§ 4311, 4312, 4313, 4316.

9 i. Declare that Defendants' violations of USERRA were willful pursuant
10 to 38 U.S.C. § 4323(d)(1)(C).

11 j. Order such other relief as may be just and proper.
12
13
14

15
16 March 15, 2017

Respectfully submitted,

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